IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/11/2003

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.12999 of 1996

A.Mohanraj ..... Petitioner

-Vs-

1. Union of India rep. by Director
General, Railway Protection Force
Rail Bhavan, New Delhi.

2. Chief Security Commissioner
Southern Railway, M.M.C, Madras 3

3. Divisional Security Commissioner
Southern Railway, Madurai 10 ..... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, as stated therein.

For Petitioner : Mr.Kannan for
Mr.C.Sundaravadivel

For Respondents : Mr.M.Sekar for R1 to R3.

:ORDER

This writ petition has been filed for the issuance of writ of certiorari, to call for the records resulting the impugned order No.90, Sec.(E) DAR-3/66 dated 26.08.1994 passed by the first respondent herein and quash the same.

2. The brief facts necessary for the purpose of disposal of this writ petition are as follows:
The petitioner was working as Inspector in the Railway Protection Force (RPF). He was entrusted with prevention of theft of railway properties. While so, traders in that region gave a complaint that the petitioner demanded money. Show cause notice was issued and charges were framed that he received a bribe amount of Rs.43,500/-. The Enquiry Officer, after examining the witnesses, found that the charges with respect to receipt of Rs.10,000/- was proved. During the pendency of the charges, the petitioner was kept under suspension from 06.06 .1985. The enquiry officer submitted his report on

13.12.1990 to the disciplinary authority. The Disciplinary authority issued the second show cause notice on 17.07.1991 and thereafter by order dated 04.09 .1991, a punishment of reduction to the rank of Sub-Inspector for one year was imposed. Against that, the petitioner filed an appeal. In the appeal, it was held that one instance of accepting bribe was proved but the punishment was confirmed. This writ petition is filed challenging that order.

3. The learned counsel appearing for the petitioner submitted that the impugned order is not legally sustainable as it suffers from number of legal infirmities. He contended that the entire disciplinary proceeding is vitiated inasmuch as the principle of natural justice was not followed. The petitioner requested for the assistance of a lawyer or legal assistance, since the presenting officer was a member from the CBI and hence legally trained; But, he was not permitted. Further, the complaint copy was not given even when asked for; the statement of witnesses were also not given. Therefore, the entire proceeding is biased and also illegal and no consequences could flow from such an enquiry. Further there is a delay of 6+ years in completing enquiry. He was kept under suspension for 6 + years and ultimately that period was treated as "dies non". The entire proceedings including the impugned order is liable to be set aside.

4. In the counter affidavit, it is stated that the issue of charge memo was delayed due to the non-receipt of CBI report through the vigilance branch. The writ petitioner did not cooperate with the enquiry officer in the conduct of enquiry. He filed WP.No.3486 of 1986 in the High court against the order of the disciplinary authority which was dismissed on 06.10.1989. Further during the progress of the enquiry, the earlier enquiry officer was promoted and transferred out of southern railway band hence another enquiry officer was appointed. The witnesses examined in this case are many in number. The investigating officer also retired from service. Hence, there was some delay in examining those witnesses and due to various administrative problems, the delay occurred and it was not willful or illegal. the writ petitioner was given all the opportunities during examining and crossexamining witnesses.

5. The learned counsel appearing for the petitioner submitted that there is an inordinate delay of 6+ years in conducting enquiry and during the entire period, he was kept under suspension and ultimately after passing orders, the days of suspension was treated as "dies non". Therefore, the delay in conducting the enquiry is fatal and hence the entire enquiry proceedings shall be set aside.

6. Per contra, the learned counsel appearing for the respondent submitted that the delay was caused only due to the writ petitioner. He filed writ petition before this Court challenging the enquiry proceedings. Therefore, the proceedings could not be completed in time. In the circumstances, the delay caused cannot said to be fatal to the enquiry proceedings.

7. Considering the arguments of the petitioner and respondent, it appears that the delay was caused due to the acts of the writ petitioner in

taking the matter to the High Court by way of writ petition. The pendency of the writ petition before the High Court resulted in the delay in enquiry proceedings. Therefore, that is not the delay which affects the enquiry proceedings. Hence, this argument of the learned counsel for the petitioner is not acceptable and hence rejected.

8. The learned counsel for the petitioner further submitted that the petitioner wanted legal assistance; the presenting Officer was trained legally since he was a CBI personnel. Therefore, the petitioner ought to have been given legal assistance. Since a legally trained personnel was not provided, the enquiry proceedings gets vitiated.

9. The learned counsel appearing for the respondent submitted that as per the Rules, he was permitted to have a friend to assist him. But, the petitioner wanted a person who was already representing another constable. Therefore, the request to have the same person was not permissible and hence it was rejected. But, at the same time, the petitioner is not entitled to have a legally trained person as his assistant inasmuch as the presenting officer was not a legally trained person. The mere fact that he was a CBI employee, it does not mean that he was legally trained person. This argument of the learned counsel for the respondent is acceptable. There is no evidence to show that the presenting officer was a legally trained person. As per Rule 44(v) RPF regulation, only a friend assistance can be taken by the delinquent. But such a friend shall not be representing any other delinquent during that period. The petitioner wanted one Madhur Hussain as his friend to assist the enquiry proceedings. The same person was already assisting another person and hence he was not permitted. Such rejection was within the rules and therefore that cannot be a ground to set aside the enquiry proceedings. Hence, the argument of the learned counsel for the petitioner is not acceptable and hence rejected.

10. The learned counsel for the petitioner next submitted that a complaint copy was not given to him even though it was asked for. Further the statement of witnesses also not furnished and the enquiry proceeding is liable to be set aside. In support of his contention, he relied upon the judgment of the Supreme Court in The State of Punjab Vs. Bhagat Ram (AIR 1974 SC 2335), wherein the Supreme Court has held as:
"It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken. Though the Government servant is given an opportunity to cross-examine the witnesses unless the statements are given to him he will not be able to have an effective and useful cross-examination."

The learned counsel also relied upon the decision in Kashinath Dikshita Vs. Union of India and Others (AIR 1986(3)SC 229), the Supreme Court has held as:
"When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against

him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that he allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental enquiry depends on the facts of each case."
The counsel also relied upon the judgment in State of Uttar Pradesh Vs. Sharif (AIR 1982 Supreme Court 937), wherein it is held that the statements of witnesses recorded during preliminary inquiry also not furnished. It was held the delinquent was ed reasonable opportunity to defend himself at disciplinary enquiry.

11. In the counter it is stated as follows:
"it is submitted that non-supply of statement of witnesses did not in any way, deprive the writ petitioner of properly cross examining the other witnesses, since the enquiry was conducted based on the deposition of the witnesses and the writ petitioner was given all the opportunities of examining and cross examining the PWs."

12. In the affidavit filed by the writ petitioner in paragraph-6, it is stated as follows:
"I humbly state that since some of the documents (Statements of witnesses) were not made available for my perusal before commencement of the regular enquiry, I was deprived of the facility of properly cross-examining the other witnesses. It is submitted that the instances shown in the allegations are inter-linked and most of the witnesses are either related by heredit or close companions in business. Commencing and conducting the enquiry without furnishing copies of all the documents listed in support of the charge was a great obstacle in defending my case and I was handicapped very much in cross-examining the witnesses, and to effectively defend my case."

From the above extract, it is seen that the petitioner has not stated specifically as to whose statement, that was not given to him. In the typed set also, he was not filed the requisition made by him seeking for statement of witnesses. It is true that if the statement of witnesses who were examined before the enquiry Officer was not given earlier, it affects the enquiry as the judgment relied upon by the petitioner; it is not sufficient if he is allowed to peruse those statements. But, in the absence of any specific averment in the affidavit as to which of those statement of the witnesses who were examined before the enquiry officer were not furnished. Therefore, the petitioner has not proved his case that he sought for any statement of particular witnesses who were examined by the enquiry officer and that was not given. Therefore, this argument does not help the petitioner.

13. Further, the learned counsel for the petitioner contended that he was not given opportunity of personal hearing during appeal and as per the decision of the supreme Court in AIR 1986 SC 1173 (Para-24), disposal of the appeal without giving personal hearing is not proper and therefore the order

is liable to be set aside.

The counsel also relied upon another Judgment in Ram Chander Vs. Union of India and others (AIR 1981 SC 1173), wherein the Supreme court has held as:
"Where, in appeal under R.18(88) against the penalty of removal under R.6(viii) imposed by the General Manager against a railway servant, the Railway Board dismissed the appeal by an order which was just a mechanical reproduction of the phraseology of R.22(2) without any attempt on the part of the Railway Board to marshall the evidence on record with a view to decide about the sustainability of the findings recorded by the disciplinary authority and, further, in the order itself there was no indication that the Railway Board applied its mind as to whether the act of misconduct with which the railway servant concerned (appellant) was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse during the period of 24 years of his service, there being non-compliance with the requirements of R.22(2), the order passed by the Railway Board was illegal and must be set aside."

14. The learned counsel for the respondent submitted that as per Rule 212 RPF Rules, personal hearing would be given in appeal only on request. Therefore, when the rule specifically provides that only on request, personal hearing will be given. Not giving personal hearing does not vitiate the order passed in appeal. For these reasons the argument of the learned counsel for the respondent is acceptable.

15. It is to be seen that the petitioner was charged with a very serious offence of getting bribe, a serious offence of demanding illegal gratification and that was also found against him. When that be the case, the punishment awarded namely, reduction of rank from the Inspector to Sub-Inspector for a period of one year is very lenient. It is not proportionate to the proved charge. Under the circumstance, the only punishment should be dismissal from service. But, on the contrary, it is not known why the authorities have taken such a lenient view of reduction in rank only for the period of one year. This Court cannot now interfere with the punishment except to observe that the punishment was lenient.

16. In the result, the petition is dismissed as devoid of merits. No costs.

Index:yes
Internet:yes

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To

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